Calendar No. 492

99TH CONGRESS
1ST SESSION

S. 1855

[Report No. 99–224]

To revise the provisions of the Public Health Service Act relating to health planning.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 1985

Mr. QUAYLE (for himself, Mr. WEICKER, and Mr. DURENBERGER) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

DECEMBER 18 (legislative day, DECEMBER 16), 1985

Reported by Mr. HATCH, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To revise the provisions of the Public Health Service Act relating to health planning.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Health Planning and
4 Resource Allocation Act of 1986".

SEC. 2. It is the purpose of this Act to permit States to have flexibility in health planning activities in order to promote competition in the provision of health care services.

SEC. 3. (a) Title XV of the Public Health Service Act is amended to read as follows:

"TITLE XV—HEALTH PLANNING

"PART A—DEFINITIONS

~~"SEC. 1502.~~ "*SEC. 1501.* For purposes of this title:

~~"(1) The term 'State' means each of the several States and the District of Columbia.~~

~~"(2)~~ "*(1)* The term 'Governor' means the chief executive officer of a State or the designee of such chief executive officer.

~~"(3)~~ "*(2)* The term 'State health services and resources allocation agency' or 'designated agency' means the State agency which is designated by the Governor of a State to develop the State plan required under section ~~1516~~ *1518* and which is responsible for the administration of the State certificate of need program, if any, under part C.

~~"(4)~~ "*(3)* The term 'local planning agency' means an entity—

"(A) whose primary purpose is health planning and resource allocation;

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"(B) which is controlled by a governing body a majority of which are consumers and major purchasers; and

"(C) which is—

"(i) a nonprofit private corporation which is not controlled by any other legal entity and which engages in health planning functions for a defined geographic area consistent with the provisions of this title; or

"(ii) a public regional planning body or single unit of general local government that is authorized by State or local law to carry out health planning functions for a defined geographic area consistent with the provisions of this title.

~~"(5)~~ *"(4)* The term 'State health services and resources allocation plan' or 'State plan' means a plan submitted by the designated agency and approved by the Governor of the State in accordance with section ~~1516.~~ *1518.*

~~"(6)~~ *"(5)* The term 'State administrative program' or 'State program' means the State administrative program required under section ~~1517.~~ *1519.*

~~"(7)~~ *"(6)* The term 'health care facility' means a private or public hospital, rehabilitation facility, nursing

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1 home, or any other health care facility that the Gover-
2 nor of a State may designate by regulation, except that
3 such term does not include Christian Science sanatori-
4 ums operated, or listed and certified, by the First
5 Church of Christ, Scientist, Boston, Massachusetts.

6 ~~"(8)~~ *"(7)* The term 'institutional health services'
7 means health services which (A) are provided through
8 health care facilities, and (B) entail annual operating
9 costs of at least the expenditure minimum. For pur-
10 poses of this paragraph, the term 'expenditure mini-
11 mum' means $310,000 for the twelve-month period be-
12 ginning on October 1, 1985, and for each twelve-
13 month period thereafter, $310,000 or, at the discretion
14 of the State, the figure in effect for the preceding
15 twelve-month period, adjusted to reflect the change in
16 the preceding twelve-month period in an index desig-
17 nated by the Secretary by regulation for purposes of
18 making such adjustment.

19 ~~"(9)~~ *"(8)* The term 'capital expenditure' means an
20 expenditure—

21 "(A) made by or on behalf of a health care
22 facility; and

23 "(B)(i) which (I) under generally accepted ac-
24 counting principles is not properly chargeable as
25 an expense of operation and maintenance, or (II)

is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and

"(ii) which (I) exceeds the expenditure minimum, (II) substantially changes the bed capacity of the facility with respect to which the expenditure is made, or (III) substantially changes the services of such facility.

For purposes of subparagraph (B)(ii)(I), the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure described in subparagraph (B)(i) is made shall be included in determining if such expenditure exceeds the expenditure minimum. Donations of equipment or facilities to a health care facility which if acquired directly by such facility would be subject to review under part C shall be considered capital expenditures for purposes of such section, and a transfer of equipment or facilities for less than fair market value shall be considered a capital expenditure for purposes of such section if a transfer of the equipment or facilities at fair market value would be subject to review under such section. For purposes of this paragraph, the term 'expenditure

1 minimum' means $1,000,000 for the twelve-month
2 period beginning on October 1, 1985, and for each
3 twelve-month period thereafter, $1,000,000 or, at the
4 discretion of the State, the figure in effect for the pre-
5 ceding twelve-month period, adjusted to reflect the
6 change in the preceding twelve-month period in an
7 index designated by the Secretary by regulation for
8 purposes of making such adjustment.

9 "~~(10)~~ "*(9)* The term 'major medical equipment'
10 means medical equipment which is used for the provi-
11 sion of medical and other health services and which
12 costs in excess of the expenditure minimum, except
13 that such term does not include medical equipment ac-
14 quired by or on behalf of a clinical laboratory to pro-
15 vide clinical laboratory services if the clinical laborato-
16 ry is independent of a physician's office and a hospital
17 and it has been determined under title XVIII of the
18 Social Security Act to meet the requirements of para-
19 graphs (11) and (12) of section 1861(s) of such Act. In
20 determining whether medical equipment has a value in
21 excess of the expenditure minimum, the value of stud-
22 ies, surveys, designs, plans, working drawings, specifi-
23 cations, and other activities essential to the acquisition
24 of such equipment shall be included. For purposes of
25 this paragraph and section 1530(e)(3), the term 'ex-

1 penditure minimum' means $400,000 for the twelve-
2 month period beginning on October 1, 1985, and for
3 each twelve-month period thereafter, $400,000, or, at
4 the discretion of the State, the figure in effect for the
5 preceding twelve-month period, adjusted to reflect the
6 change in the preceding twelve-month period in an
7 index designated by the Secretary by regulation for
8 purposes of making such adjustment.

9 ~~"(11)~~ *"(10)* The term 'health maintenance organi-
10 zation' means a public or private organization, orga-
11 nized under the laws of any State, which—

12 "(A) is a qualified health maintenance orga-
13 nization under section 1310(d); or

14 "(B)(i) provides or otherwise makes available
15 to enrolled participants health care services, in-
16 cluding at least the following basic health care
17 services: usual physician services, hospitalization,
18 laboratory, X-ray, emergency and preventive
19 services, and out of area coverage; (ii) is compen-
20 sated (except for copayments) for the provision of
21 the basic health care services listed in clause (i) to
22 enrolled participants by a payment which is paid
23 on a periodic basis without regard to the date the
24 health care services are provided and which is
25 fixed without regard to the frequency, extent, or

kind of health service actually provided; and (iii) provides physicians' services primarily (I) directly through physicians who are either employees or partners of such organization, or (II) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

~~"(12)~~ *"(11)* The term 'rehabilitation facility' means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision.

~~"(13)~~ *"(12)* The term 'National Council' means the National Health Planning and Resource Control Council established under section 1541.

"PART B—HEALTH PLANNING GRANTS

"AUTHORIZATION OF APPROPRIATIONS

~~"SEC. 1511. For the purpose of carrying out this part, there are authorized to be appropriated $65,086,000 for fiscal year 1986, $69,200,000 for fiscal year 1987, and $73,800,000 for fiscal year 1988 of which not more than 10 percent for any fiscal year shall be to administer Parts B, C, and D of this title.~~

1 *"SEC. 1511. (a) For the purpose of carrying out this*
2 *part, and for administrative expenses under parts C and D,*
3 *there are authorized to be appropriated $65,086,000 for fiscal*
4 *year 1986, $69,200,000 for fiscal year 1987, and*
5 *$73,800,000 for fiscal year 1988.*
6 *"(b)(1) Not more than 10 percent of the total amount*
7 *appropriated under subsection (a) for any fiscal year shall be*
8 *available for such fiscal year for the administration of this*
9 *part and parts B and C and for grants and contracts under*
10 *section 1522.*
11 *"(2) Of the amounts available under paragraph (1) for*
12 *any fiscal year, $1,000,000 shall be available for such fiscal*
13 *year for grants and contracts under section 1522.*
14 "ALLOTMENTS TO STATES
15 "SEC. 1512. (a)(1) From amounts appropriated under
16 section 1511 for a fiscal ~~year,~~ *year and available for allot-*
17 *ments under this section,* the Secretary shall allot to each
18 State ~~that has complied with the requirements of this part~~ an
19 amount that bears the same ratio to the ~~total amount appro-~~
20 ~~priated under such section~~ *available amounts* for such fiscal
21 year as the population of the State bears to the population of
22 all States, except as provided by paragraph (2).
23 "(2) Notwithstanding paragraph (1), the allotment of
24 any State in any fiscal year under this subsection shall not be
25 less than $237,600. If, under paragraph (1), the allotment of
26 any State in any fiscal year will be less than $237,600, the

1 Secretary shall increase the allotment of such State to
2 $237,600 and shall proportionately reduce the allotments of
3 all other States whose allotment exceeds $237,600 in a
4 manner that will insure that the allotment of each State in
5 such fiscal year is at least $237,600.

6 "(3) For purposes of this part, the population of a State
7 shall be determined on the basis of the 1980 decennial
8 census.

9 "(b) To the extent that all the funds ~~appropriated under~~
10 ~~section 1511 for a fiscal year and~~ available for allotment in
11 ~~such~~ *any* fiscal year are not otherwise allotted to States be-
12 cause—

13 "(1) one or more States have not submitted an
14 application ~~or description of activities~~ in accordance
15 with section ~~1520~~ *1515* for such fiscal year;

16 "(2) one or more States have notified the Secre-
17 tary that they do not intend to use the full amount of
18 their allotment; ~~or~~

19 *"(3) part of the allotment of one or more States is*
20 *returned to the Secretary for reallotment pursuant to*
21 *section 1514(b)(3); or*

22 ~~"(3)~~ *"(4)* some State allotments are offset or
23 repaid under section ~~1906(b)(3);~~ *1906(b)(3) (as such*
24 *section applies to this title pursuant to section 1515(e);*

1 such excess shall be allotted among each of the remaining
2 States in proportion to the amount otherwise allotted to such
3 States for such fiscal year without regard to this subsection.

4 "PAYMENTS UNDER ALLOTMENTS TO STATES

5 "SEC. 1513. (a) For each fiscal year, the Secretary shall
6 make payments, as provided by section 6503(a) of title 31,
7 United States Code, to each State from its allotments under
8 section 1512 from amounts appropriated for that fiscal year.

9 "(b) Any amount paid to a State for a fiscal year and
10 remaining unobligated at the end of such year shall remain
11 available for the next fiscal year to such State for the pur-
12 poses for which it was made.

13 "USE OF ALLOTMENTS

14 "SEC. 1514. (a) Amounts paid to a State under section
15 1513 from its allotment under section 1512 for any fiscal
16 year may be used at the discretion of the State for any one or
17 more of the following:

18 "(1) the compilation or conduct of studies and
19 analyses, and the collection of data, by—

20 "(A) a State agency; or

21 "(B) local public and private entities desig-
22 nated by the State,

23 with respect to the financing and delivery of health
24 care in the State;

25 "(2) the development by public or private entities
26 designated by the State of local plans for the allocation

of health services and resources in the applicable locality;

"(3) the establishment of a certificate of need program in accordance with part C;

"(4) the collection and dissemination by public and private entities designated by the State of purchaser information with respect to health care services; and

"(5) assessments by public and private entities designated by the State of the access to health services by individuals residing in rural areas and by individuals who have no medical insurance or insufficient medical insurance.

~~"(b) Not less than 30 percent of amounts allotted to a State shall be granted by the State to local planning agencies. Any amount required to be, but not, so granted (including amounts not granted by reason of a waiver under section 1520(g)) shall be reallotted by the Secretary among States that are in compliance with this subsection. Such allotment shall be on the same basis as the allotment under section 1512.~~

"(b)(1) A State shall use not less than 30 percent of the total amount paid to a State for a fiscal year under section 1513 from its allotment under section 1512 for a fiscal year to make grants to local planning agencies in the State, except as otherwise provided in this subsection.

1 *"(2) The Secretary shall grant a waiver from the provi-*
2 *sions of paragraph (1) to any State which applies for such a*
3 *waiver.*

4 *"(3)(A) Any State which does not, for any fiscal year,*
5 *make grants to local planning agencies in the State in the*
6 *total amount required by paragraph (1) for such fiscal year*
7 *shall return to the Secretary any amount which was required*
8 *pursuant to paragraph (1) to be used for such grants but*
9 *which was not used for such grants.*

10 *"(B) If a State applies for and receives, pursuant to*
11 *paragraph (2), a waiver from the provisions of paragraph (1),*
12 *a State shall return to the Secretary any amount—*

13 *"(i) which, pursuant to paragraph (1), the State*
14 *would have been required to use for grants to local*
15 *planning agencies in the State if such waiver had not*
16 *been granted; and*

17 *"(ii) which has not been used by the State for*
18 *such grants for such fiscal year.*

19 *"(C) Amounts returned to the Secretary under this*
20 *paragraph shall be reallotted in accordance with section*
21 *1512(b).*

22 *"(4) This subsection does not apply to any State for*
23 *which, on September 30, 1985, an application under section*
24 *1536 (as such section was in effect on September 30, 1985)*
25 *was approved and was in effect.*

1 *"APPLICATION FOR ALLOTMENT*

2 *"SEC. 1515. (a) No allotment may be made under this*
3 *part to a State unless the Governor of the State submits an*
4 *application to the Secretary at such time, in such manner,*
5 *and containing or accompanied by such information as the*
6 *Secretary may reasonably require. Each such application*
7 *shall contain—*

8 *"(1) a copy of the State plan required under sec-*
9 *tion 1518;*

10 *"(2) a copy of the State administrative program*
11 *required under section 1519; and*

12 *"(3) a description of the State certificate of need*
13 *program, if any, under part C.*

14 *"(b) The Secretary may not approve an application for*
15 *an allotment under this part unless the Secretary determines*
16 *that—*

17 *"(1) the State plan complies with the provisions*
18 *of this title;*

19 *"(2) the State administrative program complies*
20 *with the provisions of this title;*

21 *"(3) the State certificate of need program, if any,*
22 *complies with the requirements of this title; and*

23 *"(4) the designated agency has sufficient author-*
24 *ity under State law to enforce the State administrative*
25 *program and the requirements of this title.*

1 *"(c) The Federal share in any fiscal year of the cost of*
2 *carrying out any application under this section shall be 75*
3 *percent.*
4 *"(d) Notwithstanding subsections (a) and (b), the Secre-*
5 *tary may make an allotment to a State under this part for*
6 *fiscal year 1986 if the application of the State certifies to the*
7 *Secretary that—*
8 *"(1) the State will comply with the provisions of*
9 *this title (as in effect on September 30, 1985); and*
10 *"(2) the State will comply with the provisions of*
11 *this title (as in effect on and after the effective date of*
12 *the Health Planning and Resource Allocation Act of*
13 *1986) during fiscal year 1987, and each of the suc-*
14 *ceeding fiscal years.*
15 *"(e) Except where inconsistent with the provisions of*
16 *this part, the provisions of section 1903(b), section 1906(a),*
17 *paragraphs (1) through (5) of section 1906(b), and sections*
18 *1907, 1908, and 1909 shall apply to this part in the same*
19 *manner as such provisions apply to part A of title XIX.*
20 *"GRANTS TO LOCAL PLANNING AGENCIES*
21 *"SEC. 1516. (a) A local planning agency in a State*
22 *may use a grant provided to such agency with funds paid to*
23 *the State under this part to—*
24 *"(1) provide information and opinions to the des-*
25 *ignated agency of such State;*

"(2) assist the designated agency of such State in health planning and resource allocation; and

"(3) encourage the development of cost-effective alternatives to current health care financing and delivery systems.

"(b) The State share in any fiscal year of the cost of carrying out an application of a local planning agency for a grant from funds paid to such State under this part shall be not more than 95 percent for fiscal year 1986, 85 percent for fiscal year 1987, and 75 percent for fiscal year 1988 and each succeeding fiscal year.

"DESIGNATION OF STATE HEALTH SERVICES AND RESOURCES ALLOCATION AGENCY

~~"SEC. 1515.~~ *"SEC. 1517.* (a) The Governor of each State shall designate a State agency as the State health services and resources allocation agency.

"(b) The designated agency shall—

"(1) develop and administer the State health services and resources allocation plan required under section ~~1516;~~ *1518;*

"(2) develop and administer the State administrative program required under section ~~1517;~~ *1519;*

"(3) administer the certificate of need ~~program (if any)~~ *program, if any,* under part C; and

"(4) prepare the annual report required under section ~~1519.~~ *1521.*

"STATE PLAN

~~"SEC. 1516.~~ "*SEC. 1518.* The designated agency of each State shall prepare the State health services and resources allocation plan. For each of the first three fiscal years beginning after the date on which a State plan is prepared, the State plan shall contain—

"(1) a description of the health care needs of the State for services and facilities;

"(2) an inventory of the health care services and facilities located in the State; and

"(3) a comparison of the health care needs of the State identified pursuant to paragraph (1) with the services and facilities identified pursuant to paragraph (2) and a statement of how the designated agency plans to allocate such services and facilities to meet the health care needs of the State.

"STATE ADMINISTRATIVE PROGRAM

~~"SEC. 1517.~~ "*SEC. 1519.* (a) The designated agency shall develop a State administrative program with respect to health planning and resource allocation. The program shall—

"(1) provide for the performance within the State of the functions described in section ~~1515(b)~~ *1517(b)* and specify the designated agency as the sole agency responsible for the performance of such functions and for the administration of the State program;

"(2) contain or be supported by satisfactory evidence that the designated agency has under State law the authority to carry out such functions and the State program;

"(3) contain a current budget for the operation of the designated agency;

"(4) contain provisions for a professional staff for health planning and resource allocation;

"(5) require the designated agency to perform its functions in accordance with the established procedures and criteria of that agency;

"(6) require the designated agency to comply with State administrative regulations required of other public agencies within the State;

"(7) provide for fiscal control and accounting procedures consistent with State law; and

"(8) contain provisions for a staff for the State Advisory Board established under section ~~1518.~~ *1520.*

"(b) The State administrative program shall be approved by the Governor of the State.

"STATE ADVISORY BOARDS

~~"SEC. 1518.~~ *"SEC. 1520.* (a) The Governor of each State shall appoint a State Advisory Board to provide assistance to the designated agency with respect to health planning and resource allocation. The members of the Advisory Board shall be broadly representative of consumers of health

care, including individuals and major purchasers, and of providers of health care. Two-thirds of the members of a State Advisory Board shall be major purchasers.

"(b) Each State Advisory Board shall review the State plan required under section ~~1516,~~ *1518,* and the report of the designated agency required under section ~~1519,~~ *1521,* and shall prepare and transmit to the Governor of the State a report containing its comments on such plan and annual report. The designated agency shall include the report of the Advisory Board required under this section in the report required under section ~~1519.~~ *1521.*

"(c) Each State Advisory Board shall meet at least once each year.

"ANNUAL REPORT

~~"SEC. 1519.~~ "*SEC. 1521.* (a) By December 1 of each year, each designated agency shall prepare and transmit to the Governor of the State an annual report. The annual report shall contain—

"(1) a copy of the State plan required under section ~~1512;~~ *1518;*

"(2) a summary describing the activities of the designated agency in carrying out the certificate of need ~~program (if any)~~ *program, if any,* under part C;

"(3) a summary statement, for each major type of provider of health care, of—

"(A) total revenues obtained in the preceding fiscal year;

"(B) per capita expenditures of each such type of provider during the preceding fiscal year;

"(C) changes in prices charged for health care services and changes in the volume of use of health care services during the preceding fiscal year; and

"(D) the rate of increase or decrease in per capita expenditures by each such provider during the preceding fiscal year; and

"(4) the report of the State Advisory Board required under section ~~1518.~~ *1520.*

"(b) By January 1 of each year, the Governor of each State shall transmit to the Secretary the annual report prepared by the designated agency under subsection (a), and the comments of the Governor on such report. The Governor shall publish and make the report, including such comments, available to the public.

~~"APPLICATION FOR GRANT~~

~~"SEC. 1520. (a) No grant may be made under this section to a State unless the Governor of the State submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require. Each such application shall contain—~~

1 ~~"(1) a copy of the State plan required under sec-~~
2 ~~tion 1516;~~
3 ~~"(2) a copy of the State administrative program~~
4 ~~required under section 1517; and~~
5 ~~"(3) a description of the State certificate of need~~
6 ~~program (if any) under part C.~~
7 ~~"(b) The Secretary may not approve an application for a~~
8 ~~grant under this section unless the Secretary determines~~
9 ~~that—~~
10 ~~"(1) the State plan complies with the provisions~~
11 ~~of this title;~~
12 ~~"(2) the State administrative program complies~~
13 ~~with the provisions of this title;~~
14 ~~"(3) the State certificate of need program (if any)~~
15 ~~complies with the requirements of this title; and~~
16 ~~"(4) the designated agency has sufficient authority~~
17 ~~under State law to enforce the State administrative~~
18 ~~program and the requirements of this title.~~
19 ~~"(c) In addition to the purpose described in subsection~~
20 ~~(a), amounts provided to a State under this section shall be~~
21 ~~used by the Governor of each State to make grants to local~~
22 ~~planning agencies in the State. The purpose of such grants~~
23 ~~shall be to provide support to enable local planning agencies~~
24 ~~to provide information and opinions to the designated agency~~
25 ~~to assist the designated agency in carrying out part B.~~

1 ~~"(d) The Federal share in any fiscal year of the cost of~~
2 ~~carrying out any application under this section shall be 75~~
3 ~~percent.~~
4 ~~"(e) Any State's allotment under subsection (b) for a~~
5 ~~fiscal year which the Secretary determines will not be re-~~
6 ~~quired, for the period that such allotment is available, be-~~
7 ~~cause—~~
8 ~~"(1) the State did not apply for such allotment; or~~
9 ~~"(2) the Secretary determined that the State was~~
10 ~~ineligible for a grant under this section from such allot-~~
11 ~~ment,~~
12 ~~shall be available for reallotment from time to time, on such~~
13 ~~dates during such period as the Secretary shall determine, to~~
14 ~~other States in proportion to the original allotments to such~~
15 ~~States under subsection (b) for such fiscal year. Any amount~~
16 ~~allotted to a State under this subsection during a fiscal year~~
17 ~~shall be deemed a part of its allotment under subsection (b)~~
18 ~~for such fiscal year.~~
19 ~~"(f) Notwithstanding subsections (c) and (d), the Secre-~~
20 ~~tary may make a grant to a State under this section for fiscal~~
21 ~~year 1986, if the application of the State certifies to the Sec-~~
22 ~~retary that—~~
23 ~~"(1) the State will comply with the provisions of~~
24 ~~this title (as in effect on September 30, 1985); and~~

1 ~~"(2) the State will comply with the provisions of~~
2 ~~this title (as in effect on and after October 1, 1985)~~
3 ~~during fiscal year 1987, and each of the succeeding~~
4 ~~fiscal years.~~
5 ~~"(g) The Secretary shall grant any State that applies a~~
6 ~~waiver from the requirements of subsection (e).~~
7 ~~"USE OF GRANT BY LOCAL PLANNING AGENCY~~
8 ~~"SEC. 1521. (a) A local planning agency in a State may~~
9 ~~use a grant provided under this part to—~~
10 ~~"(1) assist the designated agency of such State in~~
11 ~~health planning and resource allocation; and~~
12 ~~"(2) encourage the development of cost-effective~~
13 ~~alternatives to current health care financing and~~
14 ~~delivery systems.~~
15 ~~"(b) The Federal share in any fiscal year of the cost of~~
16 ~~carrying out an application of a local planning agency under~~
17 ~~section 1520(e) shall be not more than 95 percent for fiscal~~
18 ~~year 1986, 85 percent for fiscal year 1987, and 75 percent~~
19 ~~for fiscal year 1988 and each succeeding fiscal year.~~
20 "CENTERS FOR HEALTH PLANNING
21 "SEC. 1522. (a) For the purposes of assisting the Secre-
22 tary in carrying out this title, providing such technical and
23 consulting assistance as designated agencies may from time
24 to time require, conducting research, studies and analyses of
25 health planning and resources development, and developing
26 health planning approaches, methodologies, policies, and

1 standards, the Secretary shall by grants or contracts, or both,
2 assist public or private nonprofit entities in meeting the costs
3 of operating two centers for multidisciplinary health planning
4 development and assistance. To the extent practicable, the
5 Secretary shall provide assistance under this section to sup-
6 port centers which were in existence on September 30, 1985.
7 "(b)(1) No grant or contract may be made under this
8 section for operation of a center unless the Secretary deter-
9 mines that the center meets the requirements of paragraph
10 (2) and is able to provide assistance and dissemination of in-
11 formation to designated agencies as provided in subsections
12 (a) and (c).
13 "(2) The requirements referred to in paragraph (1) are
14 as follows:
15 "(A) There shall be a full-time director of the
16 center who possesses a demonstrated capacity for sub-
17 stantial accomplishment and leadership in the field of
18 health planning and resources development, and there
19 shall be such additional professional staff as may be ap-
20 propriate.
21 "(B) The staff of the center shall represent a di-
22 versity of relevant disciplines.
23 "(C) Such additional requirements as the Secre-
24 tary may by regulation prescribe.

"(c) Centers assisted under this section (1) may enter into arrangements with designated agencies for the provision of such services as may be appropriate and necessary in assisting such agencies in performing their functions under this title, and (2) shall develop and use methods (satisfactory to the Secretary) to disseminate to such agencies planning approaches, methodologies (including methodologies to provide for education of new board members and new staff and continuing education of board members and staff of such agencies), policies, and standards.

~~"(d) For the purpose of making payments pursuant to grants and contracts under subsection (a), from the sums appropriated to carry out this title in any fiscal year, $1,000,000 shall be available.~~

"(e) "*(d)* Each center shall be located in the geographical half of the continental United States that it will serve.

"PART C—CERTIFICATE OF NEED PROGRAM

"SEC. 1530. (a) If a State establishes a certificate of need program, the program shall, in accordance with this section, provide for the following:

"(1) Review and determination of need under such program for—

"(A) major medical equipment and institutional health services, and

"(B) capital expenditures,

1 shall be made before the time such equipment is ac-
2 quired, such services are offered, substantial expendi-
3 tures are undertaken in preparation for such offering,
4 or capital expenditures are obligated.

5 "(2) The acquisition and offering of only such
6 equipment and services as may be found by the desig-
7 nated agency to be needed; and the obligation of only
8 those capital expenditures found to be needed by the
9 designated agency. Except as otherwise authorized by
10 this section, review under the program of an applica-
11 tion for a certificate of need may not be made subject
12 to any criterion and the issuance of a certificate of
13 need may not be made subject to any condition unless
14 the criterion or condition directly relates to—

15 "(A) criteria prescribed by section 1531(c),

16 "(B) criteria prescribed by regulations of the
17 Secretary promulgated under section 1532(a) (as
18 such section was in effect before the date of en-
19 actment of the Health Planning and Resource Al-
20 location Act of 1985), or

21 "(C) criteria prescribed by regulation by the
22 designated agency in accordance with an authori-
23 zation prescribed by State law.

1 The Secretary may not require a State to include in its
2 program any criterion in addition to criteria described
3 in subparagraphs (A) and (B).

4 "(3) An application for a certificate of need for an
5 institutional health service, medical equipment, or a
6 capital expenditure shall specify the time the applicant
7 will require to make such service or equipment avail-
8 able or to obligate such expenditure and a timetable for
9 making such service or equipment available or obligat-
10 ing such expenditure. After the issuance of a certificate
11 of need, the designated agency shall periodically
12 review the progress of the holder of the certificate in
13 meeting the timetable specified in the approved appli-
14 cation for the certificate. If on the basis of such a
15 review, the designated agency determines that the
16 holder of a certificate is not meeting such timetable
17 and is not making a good faith effort to meet it, the
18 designated agency may withdraw the certificate.

19 "(4) In issuing a certificate of need, the State
20 shall specify in the certificate the maximum amount of
21 capital expenditures which may be obligated under
22 such certificate. The program shall, in accordance with
23 regulations promulgated by the Secretary, prescribe the
24 extent to which a project authorized by a certificate of
25 need shall be subject to further review if the amount of

capital expenditures obligated or expected to be obligated for the project exceed the maximum specified in the certificate of need.

"(5) The program shall provide that (A) the requirements of section 1531 shall apply to proceedings under the program, and (B) each decision to issue a certificate of need (i) may only be issued by the designated agency, and (ii) shall, except in emergency circumstances that pose a threat to public health, be consistent with the State plan in effect for such State under section ~~1516.~~ *1518.*

"(b)(1) Under the program a State shall not require a certificate of need for the offering of an inpatient institutional health service or the acquisition of major medical equipment for the provision of an inpatient institutional health service or the obligation of a capital expenditure for the provision of an inpatient institutional health service by—

"(A) a health maintenance organization or a combination of health maintenance organizations if (i) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to individuals enrolled in such organization or organizations, and (ii) at least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals

1 enrolled with such organization or organizations in the
2 combination;
3 "(B) a health care facility if (i) the facility primar-
4 ily provides or will provide inpatient health services,
5 (ii) the facility is or will be controlled, directly or indi-
6 rectly, by a health maintenance organization or a com-
7 bination of health maintenance organizations, (iii) the
8 facility is or will be geographically located so that the
9 service will be reasonably accessible to individuals en-
10 rolled in such organization or organizations, and (iv) at
11 least 75 percent of the patients who can reasonably be
12 expected to receive the institutional health service will
13 be individuals enrolled with such organization or orga-
14 nizations in the combination; or
15 "(C) a health care facility (or portion thereof) if (i)
16 the facility is or will be leased by a health maintenance
17 organization or combination of health maintenance or-
18 ganizations and on the date the application is submit-
19 ted under paragraph (2) at least fifteen years remain in
20 the term of the lease, (ii) the facility is or will be geo-
21 graphically located so that the service will be reason-
22 ably accessible to individuals enrolled in such organiza-
23 tion or organizations, and (iii) at least 75 percent of
24 the patients who can reasonably be expected to receive

1 the institutional health service will be individuals en-
2 rolled with such organization,
3 if, with respect to such offering, acquisition, or obligation, the
4 designated agency has, upon application under paragraph (2),
5 granted an exemption from such requirement to the organiza-
6 tion, combination of organizations, or facility.
7 "(2) A health maintenance organization, combination of
8 health maintenance organizations, or health care facility shall
9 not be exempt under paragraph (1) from obtaining a certifi-
10 cate of need before offering an institutional health service,
11 acquiring major medical equipment, or obligating capital ex-
12 penditures unless—
13 "(A) it has submitted, at such time and in such
14 form and manner as the designated agency shall pre-
15 scribe, an application for such exemption,
16 "(B) the application contains such information re-
17 specting the organization, combination, or facility and
18 the proposed offering, acquisition, or obligation as the
19 designated agency may require to determine if the or-
20 ganization or combination meets the requirements of
21 paragraph (1) or the facility meets or will meet such
22 requirements, and
23 "(C) the designated agency approves such
24 application.

1 In the case of a proposed health care facility (or portion
2 thereof) which has not begun to provide institutional health
3 services on the date an application is submitted under this
4 paragraph with respect to such facility (or portion), the facili-
5 ty (or portion) shall meet the applicable requirements of para-
6 graph (1) when the facility first provides such services. The
7 designated agency shall approve an application submitted
8 under this paragraph if it determines that the applicable re-
9 quirements of paragraph (1) are met.

10 "(3) Notwithstanding subsection (d), a health care facili-
11 ty (or any part thereof) or medical equipment with respect to
12 which an exemption was granted under paragraph (1) may
13 not be sold or leased and a controlling interest in such facility
14 or equipment or in a lease of such facility or equipment may
15 not be acquired and a health care facility described in sub-
16 paragraph (C) of paragraph (1) which was granted an exemp-
17 tion under such paragraph may not be used by any person
18 other than the lessee described in such subparagraph
19 unless—

20 "(A) the designated agency issues a certificate of
21 need approving the sale, lease, acquisition, or use, or

22 "(B) the designated agency determines, upon ap-
23 plication, that the entity to which the facility or equip-
24 ment is proposed to be sold or leased, which intends to
25 acquire the controlling interest in or use the facility is

1 (i) a health maintenance organization or a combination
2 of health maintenance organizations which meets the
3 requirements of clause (i) of subparagraph (A) of para-
4 graph (1) and with respect to such facility or equip-
5 ment, the entity meets the requirements of clause (ii) of
6 such subparagraph, or (ii) a health care facility which
7 meets the requirements of clauses (i), (ii), and (iii) of
8 subparagraph (B) of paragraph (1) and with respect to
9 its patients meets the requirements of clause (iv) of
10 such subparagraph.

11 "(4) In the case of a health maintenance organization or
12 an ambulatory care facility or health care facility which am-
13 bulatory or health care facility is controlled, directly or indi-
14 rectly, by a health maintenance organization or a combina-
15 tion of health maintenance organizations, a State may under
16 the program apply its certificate of need requirements only to
17 the offering of inpatient institutional health services, the ac-
18 quisition of major medical equipment, and the obligation of
19 capital expenditures for the offering of inpatient institutional
20 health services and then only to the extent that such offering,
21 acquisition, or obligation is not exempt under paragraph (1).

22 "(5) Notwithstanding section 1531(c), if a health main-
23 tenance organization or a health care facility which is con-
24 trolled, directly or indirectly, by a health maintenance organi-
25 zation applies for a certificate of need, such application shall

1 be approved by the designated agency if the designated
2 agency finds (in accordance with criteria prescribed by the
3 Secretary by regulation) that—

4 "(A) approval of such application is required to
5 meet the needs of the members of the health mainte-
6 nance organization and of the new members which
7 such organization can reasonably be expected to enroll,
8 and

9 "(B) the health maintenance organization is
10 unable to provide, through services or facilities which
11 can reasonably be expected to be available to the orga-
12 nization, its institutional health services in a reasonable
13 and cost-effective manner which is consistent with the
14 basic method of operation of the organization and
15 which makes such services available on a long-term
16 basis through physicians and other health professionals
17 associated with it.

18 Except as provided in paragraph (1) and notwithstanding
19 subsection (d), a health care facility (or any part thereof) or
20 medical equipment with respect to which a certificate of need
21 was issued under this subsection may not be sold or leased
22 and a controlling interest in such facility or equipment or in a
23 lease of such facility or equipment may not be acquired unless
24 the designated agency issues a certificate of need approving
25 the sale, acquisition, or lease.

"(c) An application for a certificate of need for a capital expenditure which is required—

"(1) to eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations,

"(2) to comply with State licensure standards, or

"(3) to comply with accreditation standards compliance with which is required to receive reimbursements under title XVIII of the Social Security Act or payments under a State plan for medical assistance approved under title XIX of such Act,

shall be approved unless the designated agency finds that the facility or service with respect to which such capital expenditure is proposed to be made is not needed or that the obligation of such capital expenditure is not consistent with the State plan in effect under section ~~1516.~~ *1518.* An application for a certificate of need approved under this subsection shall be approved only to the extent that the capital expenditure is required to eliminate or prevent the hazards described in paragraph (1) or to comply with the standards described in paragraph (2) or (3).

"(d)(1) Under the program a certificate of need shall, except as provided in subsection (b), be required for the obligation of a capital expenditure to acquire (either by purchase

1 or under lease or comparable arrangement) an existing health
2 care facility if—
3 "(A) the notice required by paragraph (2) is not
4 filed in accordance with that paragraph with respect to
5 such acquisition, or
6 "(B) the designated agency finds, within thirty
7 days after the date it receives a notice in accordance
8 with paragraph (2) with respect to such acquisition,
9 that the services or bed capacity of the facility will be
10 changed in being acquired.
11 "(2) Before any person enters into a contractual ar-
12 rangement to acquire an existing health care facility which
13 arrangement will require the obligation of a capital expendi-
14 ture, such person shall notify the designated agency of the
15 State in which such facility is located of such person's intent
16 to acquire such facility and of the services to be offered in the
17 facility and its bed capacity. Such notice shall be made in
18 writing and shall be made at least thirty days before contrac-
19 tual arrangements are entered into to acquire the facility with
20 respect to which the notice is given.
21 "(e)(1)(A) Except as provided in subsection (b) and sub-
22 paragraph (B), under the program a certificate of need shall
23 not be required for the acquisition of major medical equip-
24 ment which will not be owned by or located in a health care
25 facility unless—

1 "(i) the notice required by paragraph (2) is not
2 filed in accordance with that paragraph with respect to
3 such acquisition, or
4 "(ii) the designated agency finds, within thirty
5 days after the date it receives a notice in accordance
6 with paragraph (2) with respect to such acquisition,
7 that the equipment will be used to provide services for
8 inpatients of a hospital.
9 "(B) The certificate of need program of a State may
10 include a requirement for a certificate of need for an acquisi-
11 tion of major medical equipment. Such requirement may be in
12 addition to the requirement for a certificate of need estab-
13 lished by subparagraph (A).
14 "(2) Before any person enters into a contractual ar-
15 rangement to acquire major medical equipment which will
16 not be owned by or located in a health care facility, such
17 person shall notify the designated agency of the State in
18 which such equipment will be located of such person's intent
19 to acquire such equipment and of the use that will be made of
20 the equipment. Such notice shall be made in writing and shall
21 be made at least thirty days before contractual arrangements
22 are entered into to acquire the equipment with respect to
23 which the notice is given.
24 "(3) For purposes of this subsection, donations and
25 leases of major medical equipment shall be considered acqui-

1 sitions of such equipment, and an acquisition of medical
2 equipment through a transfer of such equipment for less than
3 fair market value shall be considered an acquisition of major
4 medical equipment if the fair market value of such equipment
5 is at least the expenditure minimum established under section
6 ~~1502(10)~~ *1501(9)*.

7 "(f) Notwithstanding section 1531(c), when an applica-
8 tion is made by an osteopathic or allopathic facility for a
9 certificate of need to construct, expand, or modernize a
10 health care facility, acquire major medical equipment, or add
11 services, the need for that construction, expansion, modern-
12 ization, acquisition of equipment, or addition of services shall
13 be considered on the basis of the need for and the availability
14 in the community of services and facilities for osteopathic and
15 allopathic physicians and their patients. The designated
16 agency shall consider the application in terms of its impact on
17 existing and proposed institutional training programs for doc-
18 tors of osteopathy and medicine at the student, internship,
19 and residency training levels.

20 "(g)(1) Subsection (a) does not require a certificate of
21 need program to require a health care facility to obtain a
22 certificate of need for the acquisition of major medical equip-
23 ment to be used solely for research, institutional health serv-
24 ices to be offered solely for research, or the obligation of a

1 capital expenditure to be made solely for research if the ac-
2 quisition, offering, or obligation does not—
3 "(A) affect the charges of the facility for the pro-
4 vision of medical or other patient care services other
5 than the services which are included in the research;
6 "(B) substantially change the bed capacity of the
7 facility; or
8 "(C) substantially change the medical or other pa-
9 tient care services of the facility which were offered
10 before the acquisition, offering, or obligation.
11 "(2)(A) Before a health care facility acquires major med-
12 ical equipment to be used solely for research, offers an insti-
13 tutional health service solely for research, or obligates a cap-
14 ital expenditure solely for research, such health care facility
15 shall notify in writing the designated agency of the State in
16 which such facility is located of such facility's intent and the
17 use to be made of such medical equipment, institutional
18 health service, or capital expenditure.
19 "(B) Paragraph (1) does not apply with respect to the
20 acquisition of major medical equipment, the offering of insti-
21 tutional health services, or the obligation of a capital expend-
22 iture if—
23 "(i) the notice required by subparagraph (A) is not
24 filed with the designated agency with respect to such
25 acquisition, offering, or obligation, or

1 "(ii) the designated agency finds, within sixty days
2 after the date it receives a notice in accordance with
3 subparagraph (A) respecting the acquisition, offering,
4 or obligation, that the acquisition, offering, or obliga-
5 tion will have the effect or make a change described in
6 subparagraph (A), (B), or (C) of paragraph (1).
7 "(3) If major medical equipment is acquired, an institu-
8 tional health service is offered, or a capital expenditure is
9 obligated and a certificate of need is not required for such
10 acquisition, offering, or obligation as provided in paragraph
11 (1), such equipment or service or equipment or facilities ac-
12 quired through the obligation of such capital expenditure may
13 not be used in such a manner as to have the effect or to make
14 a change described in subparagraph (A), (B), or (C) of para-
15 graph (1) unless the designated agency issues a certificate of
16 need approving such use.
17 "(4) For purposes of this subsection, the term 'solely for
18 research' includes patient care provided on an occasional and
19 irregular basis and not as part of a research program.
20 "PROCEDURES AND CRITERIA FOR REVIEW OF
21 CERTIFICATE OF NEED DETERMINATIONS
22 "SEC. 1531. (a) In conducting any review of an applica-
23 tion for a certificate of need or an exemption therefrom under
24 section 1530, or in making any other determination under
25 such section, the designated agency must follow procedures

1 and apply criteria, developed and published by the designated
2 agency in accordance with regulations of the Secretary.
3 "(b) Each designated agency shall include in the proce-
4 dures required by subsection (a) at least the following:
5 "(1) Timely written notification to affected per-
6 sons of the beginning of a review of an application for
7 a certificate of need or an exemption therefrom under
8 section 1530, or of a review of compliance with such a
9 certificate.
10 "(2)(A) The establishment of a time period for the
11 approval or disapproval by the designated agency of
12 applications for certificates of need and exemptions
13 therefrom under section 1530. The time period estab-
14 lished pursuant to this subparagraph may vary with the
15 type of project for which an application is being made,
16 as specified by the designated agency pursuant to regu-
17 lation, but may not exceed one hundred and twenty
18 days.
19 "(B) Provisions that an application for a certifi-
20 cate of need or an exemption therefrom under section
21 1530 shall be considered to have been approved if the
22 designated agency has not made a decision with re-
23 spect to such application by the end of the one hundred
24 and twenty day period referred to in subparagraph (A).

1 "(3)(A) Provisions for persons subject to a review
2 to submit to the designated agency (in such form or
3 manner as the designated agency shall by regulation
4 require) such information as the designated agency may
5 require concerning the subject of such review. Each
6 designated agency shall develop procedures to assure
7 that requests for information in connection with a
8 review under this part are limited to only that informa-
9 tion which is necessary for the designated agency to
10 perform the review.

11 "(B) The establishment of an additional time
12 period for the submission under subparagraph (A) of
13 additional information with respect to an application for
14 a certificate of need or an exemption therefrom under
15 section 1530, which shall be at least fifteen calendar
16 days. Such additional time period shall not be included
17 in the one hundred and twenty day period described in
18 paragraph (2)(A).

19 "(4) Submission of periodic reports by providers of
20 health services and other persons subject to review by
21 the designated agency respecting the development of
22 proposals subject to review.

23 "(5) Provisions for written findings which state
24 the basis for any final decision or recommendation
25 made by the designated agency.

1 "(6) Timely notification of providers of health
2 services and other persons subject to review by the
3 designated agency of the health services or proposals
4 subject to review, findings made in the course of such
5 review, and other appropriate information respecting
6 such review.

7 "(7) Provisions for public hearings in the course of
8 review by the designated agency if requested by per-
9 sons directly affected by the review; and provisions for
10 public hearings, for good cause shown, respecting des-
11 ignated agency decisions.

12 "(8) Access by the general public to all applica-
13 tions reviewed by the designated agency and to all
14 other written materials essential to any designated
15 agency.

16 "(9) In the case of construction projects, submis-
17 sion to the designated agency by the entities proposing
18 the projects of letters of intent in such details as may
19 be necessary to inform the designated agency of the
20 scope and nature of the projects at the earliest possible
21 opportunity in the course of planning of such construc-
22 tion projects.

23 "(10) Provisions requiring that hearings will be
24 held before the designated agency in which—

1 "(A) any person shall have the right to be
2 represented by counsel and to present oral or
3 written arguments and evidence relevant to the
4 matter which is the subject of the hearing;
5 "(B) any person directly affected by the
6 matter which is the subject of the hearing may
7 conduct reasonable questioning of persons who
8 make factual allegations relevant to such matter;
9 and
10 "(C) a record of the hearing shall be main-
11 tained.
12 "(11) Provisions requiring that—
13 "(A) any decision of a designated agency to
14 issue or to not issue a certificate of need or to
15 withdraw a certificate of need shall be based
16 solely (i) on the review of the designated agency
17 conducted in accordance with procedures and cri-
18 teria the designated agency has adopted in ac-
19 cordance with this section and regulations promul-
20 gated under this section, and (ii) on the record es-
21 tablished in administrative proceedings held with
22 respect to the application for such certificate or
23 the designated agency's proposal to withdraw the
24 certificate, as the case may be; and

1 "(B) any decision of a designated agency to
2 approve or disapprove an application for an ex-
3 emption under section 1530(b) shall be based
4 solely on the record established in the administra-
5 tive proceedings held with respect to the applica-
6 tion.
7 "(12) Provisions requiring that—
8 "(A) each decision of the designated agency
9 with respect to a certificate of need or an applica-
10 tion for an exemption under section 1530(b) shall,
11 upon request of any person directly affected by
12 such decision, be reviewed with respect to proce-
13 dural matters under an appeals mechanism con-
14 sistent with State law governing the practices and
15 procedures of administrative agencies or, if there
16 is no such State law, by an entity (other than the
17 designated agency) designated by the Governor;
18 and
19 "(B) no decision of the designated agency
20 with respect to a certificate of need or an applica-
21 tion for an exemption under section 1530(b) shall
22 be subject to de novo administrative review.
23 "(13) Provisions permitting any person adversely
24 affected by a final decision of a designated agency with
25 respect to a certificate of need or an application for an

1 exemption under section 1530(b) to, within a reasona-
2 ble period of time after such decision is made (and any
3 administrative review of such decision is completed),
4 obtain judicial review of such decision in an appropri-
5 ate State court. The decision of the designated agency
6 shall be affirmed upon such judicial review unless it is
7 found to be arbitrary or capricious or not made in com-
8 pliance with applicable law.

9 "(14) Provisions requiring that there shall be no
10 ex parte contacts—

11 "(A) in the case of an application for a certif-
12 icate of need, between the applicant for the certif-
13 icate of need, any person acting on behalf of the
14 applicant, or any person opposed to the issuance
15 of a certificate for the applicant and any person in
16 the designated agency who exercises any respon-
17 sibility respecting the application after the com-
18 mencement of a hearing on the applicant's appli-
19 cation and before a decision is made with respect
20 to such application; and

21 "(B) in the case of a proposed withdrawal of
22 a certificate of need, between the holder of the
23 certificate of need, any person acting on behalf of
24 the holder, or any person in favor of the with-
25 drawal and any person in the designated agency

1 who exercises responsibility respecting withdrawal
2 of the certificate after commencement of a hearing
3 on the designated agency's proposal to withdraw
4 the certificate of need and before a decision is
5 made on withdrawal.
6 "(c) Criteria required by subsection (a) for designated
7 agency review shall include consideration of at least the fol-
8 lowing:
9 "(1) The relationship of the health services being
10 reviewed to the State plan.
11 "(2) The relationship of services reviewed to the
12 long-range development plan (if any) of the person pro-
13 viding or proposing such services.
14 "(3) The need that the population served or to be
15 served by such services has for such services.
16 "(4) The availability of alternative, less costly, or
17 more effective methods of providing such services.
18 "(5) The relationship of services reviewed to the
19 existing health care system of the area in which such
20 services are provided or proposed to be provided.
21 "(6) In the case of health services proposed to be
22 provided—
23 "(A) the availability of resources (including
24 health manpower, management personnel, and

1 funds for capital and operating needs) for the pro-
2 vision of such services;
3 "(B) the effect of the means proposed for the
4 delivery of such services on the clinical needs of
5 health professional training programs in the area
6 in which such services are to be provided;
7 "(C) if such services are to be available in a
8 limited number of facilities, the extent to which
9 the health professions schools in the area will
10 have access to the services for training purposes;
11 "(D) the availability of alternative uses of
12 such resources for the provision of other health
13 services; and
14 "(E) the extent to which such proposed serv-
15 ices will be accessible to all the residents of the
16 area to be served by such services.
17 "(7) The special needs and circumstances of
18 health maintenance organizations.
19 "(8) In the case of a construction project—
20 "(A) the costs and methods of the proposed
21 construction, including the costs and methods of
22 energy provision; and
23 "(B) the probable impact of the construction
24 project reviewed on the costs of providing health
25 services by the person proposing such construction

1 project and on the costs and charges to the public
2 of providing health services by other persons.
3 "(9) The special circumstances of health service
4 institutions and the need for conserving energy.
5 "(10) The factors which affect the effect of com-
6 petition on the supply of the health services being re-
7 viewed.
8 "(11) Improvements or innovations in the financ-
9 ing and delivery of health services which foster compe-
10 tition, and serve to promote quality assurance and cost-
11 effectiveness.
12 "(12) In the case of health services or facilities
13 proposed to be provided, the efficiency and appropriate-
14 ness of the use of existing services and facilities similar
15 to those proposed.
16 "(13) In the case of existing services or facilities,
17 the quality of care provided by such services or facili-
18 ties in the past.
19 "PART D—OTHER FEDERAL RESPONSIBILITIES
20 "NATIONAL HEALTH PLANNING AND RESOURCE CONTROL
21 COUNCIL
22 "SEC. 1541. (a) There is established a National Health
23 Planning and Resource Control Council. The National Coun-
24 cil shall—

1 "(1) review and analyze the annual reports re-
2 ceived by the Secretary from States under section
3 ~~1518;~~ *1521;*
4 "(2) provide the Secretary with advice and assist-
5 ance with respect to the report of the Secretary to the
6 Congress required under section 1542; and
7 "(3) make recommendations to the Secretary with
8 respect to health care planning and resource allocation
9 in order to assist the Secretary in carrying out the pur-
10 poses of this title.
11 "(b) The National Council shall consist of fifteen mem-
12 bers appointed by the Secretary as follows:
13 "(1) A majority of the members shall be repre-
14 sentatives of major purchasers.
15 "(2) Two members shall be the heads of designat-
16 ed agencies.
17 "(3) Two members shall be representatives of pro-
18 viders of health care.
19 "(4) One member shall be an individual consumer
20 of health care.
21 "(c) The Chairman of the National Council shall be
22 elected by the members of the National Council from among
23 the members who are representatives of major purchasers.
24 "(d) The term of office of a member of the National
25 Council shall be four years, except that the Secretary shall

1 divide the initial appointments to the National Council into
2 three groups of five members each for initial terms of one,
3 two, and three years.

4 "(e) At least eight members of the National Council
5 shall constitute a quorum, but a lesser number may hold
6 hearings. A vacancy in the National Council shall not affect
7 its authority.

8 "(f) Each member of the National Council shall receive
9 compensation at a rate equal to the daily rate prescribed for
10 level 6 of the Senior Executive Schedule established under
11 section 5382 of title 5, United States Code, for each day,
12 including traveltime, such member is engaged in the actual
13 performance of duties as a member of the National Council,
14 and shall be reimbursed for travel, subsistence, and other
15 necessary expenses incurred in the performance of duties as a
16 member of the National Council.

17 "ANNUAL REPORT

18 "SEC. 1542. By March 1 of each year, the Secretary
19 shall prepare and transmit to the Congress a report with re-
20 spect to activities conducted under this title during the pre-
21 ceding fiscal year. The report shall contain—

22 "(1) a summary of the activities of the States with
23 respect to health planning, resource allocation, and
24 cost containment;

"(2)(A) a comparison of the cost of health care in each State with the cost of health care in all other States;

"(B) a comparison of the cost of health care provided by each type of provider of health care in a State with the cost of health care by each such type of provider in all other States;

"(C) a comparison of the costs referred to in subparagraphs (A) and (B) among States receiving ~~grants under section 1521~~ *payments under part B* and States not receiving any ~~grant~~ *payments* under this title;

"(3) a specification, for the Nation and for each State, of—

"(A) total revenues obtained from health care services;

"(B) the per capita cost of health care services and the rate of increase of such costs from the preceding fiscal year; and

"(C) a comparison of the change in the per capita cost of health care services during the preceding fiscal year to the volume of services provided during such year, and a comparison of the change in such per capita cost to the price of services provided during such year; and

"(4) a description of the changes in the supply of health care resources during the preceding fiscal year.".

(b) Section 2(f) of such Act is amended by striking out ~~"1531(1),"~~ ~~and~~ ~~inserting~~ ~~in~~ ~~lieu~~ ~~thereof~~ ~~"1502(1),".~~ *"1531(1),".*

(c) The amendments made by this section shall take effect on 120 days after the date of enactment *of this Act,* except that the Secretary may issue regulations *to carry out title XV of the Public Health Service Act (as amended by subsection (a) of this section)* any time after the date of ~~enactment.~~ *enactment of this Act.*

~~(d) A State or territory that received federal financial assistance under this title by reason, or under the terms, of section 1526 (as in effect on the day prior to the date upon which the Health Planning and Resource Allocation Act of 1985 was enacted), shall continued to be considered a State for purposes of this title.~~

~~(e)~~ *(d)* Notwithstanding any other provision of this title, no State and no local planning agency shall receive a grant in an amount less than it received in fiscal year 1985 under title XV (as then in effect) nor shall any reallotment reduce any such grants below that amount. If the total amounts available for grants to States and local planning agencies are insufficient to carry out the provisions of the previous sentence,

1 each grant to such State and local planning agency shall be
2 reduced proportionately.

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Calendar No. 492

99TH CONGRESS
1ST SESSION

S. 1855

[Report No. 99–224]

A BILL

To revise the provisions of the Public Health Service Act relating to health planning.

DECEMBER 18 (legislative day, DECEMBER 16), 1985

Reported with amendments